IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-783

CHRISTOPHER MARTELLA, Petitioner

v.

MARINE COOKS & STEWARDS UNION etc., et al., Respondents

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

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CHRISTOPHER MARTELLA, Petitioner

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MARINE COOKS & STEWARDS UNION, etc., et al., Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Petitioner, Christopher Martella, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on September 13, 1971. The Respondents in this matter are: MARINE COOKS & STEWARDS UNION, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, and PACIFIC MARI-

TIMES ASSOCIATION STEAMSHIP COMPANIES, and MATSON NAVIGATION COMPANY.

Opinion Below

The opinion of the Court of Appeals is reported at 448 F. 2d 729 and appears in the Appendix hereto.

Jurisdiction

The judgment of the Court of Appeals for the Ninth Circuit was entered on September 13, 1971 and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 USC Section 1254 (1).

Question Presented

Whether it is proper for a U. S. District Court to deny a petitioning seaman relief from a judgment of dismissal sought under Federal Rule of Civil Procedure 60 (b) (6) where the record shows that the judgment was due to the lack of diligence of counsel and where Petitioner exercised all possible diligence.

Statutory Provisions Involved

Federal Rule of Civil Procedure 60 (b) (6)

Statement of the Case

On August 6, 1967, Christopher Martelli, [illegible], filed two actions in the Superior Court of the State of California naming his employer, his labor union, and various others as defendants alleging that he had been on two occasions discharged from employment, the result of unfair labor practices. Two separately numbered petitions for removal were filed by various defendants. The answers of various defendants were also filed. On January 11, 1968 pre-trial was set for March 11, 1968 and interrogatories were served on plaintiff on or about February 2, 1968. On February 26, 1968 pre-trial was continued by stipulation to May 6, 1968 and on that date the respective cases were ordered consolidated and the matter continued to August 26, 1968, the Court noting "Counsel not ready for pre-trial." Subsequent to this continuance, counsel for the plaintiff lost contact with the court and motions to dismiss were filed for failure to answer the interrogatories. On August 26, 1968 the court ordered attorney for plaintiff to comply with

Marrella's former attorney is now serving [redacted] in the same prison, confined for theft [redacted] one of his professional employment [redacted] with the subject of professional disciplinary proceedings.

Reasons for Granting the Writ

Simply put, unless the writ is granted the doors of justice are shut fast against the petitioning litigant whose only dereliction was to rely on his attorney.

The grand reservoir of equitable power contained in Rule 60 was designed just for this kind of case and, in other cases, relief under Rule 60 has been granted notwithstandings that relief was sought one year or more after judgment.

Justice exists only where there is a hearing on the merits. The petitioner Marrella asks only that he receive such a hearing.

Conclusion.

For the above reasons a Writ of Certiorari should issue to review the judgment and opinion

of the United States.

Respectfully submitted,

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December 10, 1971

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Cimbrian Maritime, *Appellant,* vs. Marine Cooks & Stewards Union, Seafarers International Union of North America, AFL-CIO, and Pacific Maritime Association Steamship Companies, Matson Navigation Company and Does 1 through 5, *Appellees.*	Nos. 24,578 and 24,579

[September 13, 1971]

Appeal from the United States District Court for the Central District of California

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Before: NORTHSON, DUNIWAY and WRIGHT, Circuit Judges

PER CURIAM:

The district court, following a hearing, dismissed this action for plaintiff's failure to comply with several orders of the court relating to pretrial matters. These orders were based upon various of the Federal Rules of Civil Procedure and local court rules. Plaintiff did not appeal nor pursue any procedure to reinstate the cause until some five months after the dismissal when he filed a motion, ostensibly under Rule 60(b)(6) Fed. R. Civ. P., to be relieved of the judgment. The district court denied him relief, hence this appeal.

In order to bring himself within the limited area of Rule 60 (b)(6) a petitioner is required to establish the existence of extraordinary circumstances which prevented or rendered him unable to prosecute an appeal. *Klapprott v. United States*, 335 U.S.

Judgment affirmed.

Parker v. United States, 340 U.S. 193 (1950).

... no such showing.

... developments, or any fact, which would tend ... excuse to seek review was due to "excusa- ... ground for relief under Rule 60(b)(1). To the ... plaintiff's entire lack of diligence and atten- ...

... are addressed to the sound discretion of the *Fiele v. United States*, 263 F.2d 28 (9th Cir. 1959). ... above, denial of plaintiff's motion was well within ... discretion. The judgment is therefore

Judgment

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 9-17-71—380.

...ral Rule of Civil Procedure 60:

... On motion and upon such terms as are just, the ... may relieve a party or his legal representative ... final judgment, order, or proceeding for the follow... reasons: (6) any other reason justifying relief from operation of the judgment.